

Statement of  
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United States Department of Labor  
before the  
Subcommittee on Public Buildings and Grounds  
Committee on Public Works and Transportation  
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Mr. Chairman and Members of the Subcommittee:

Good morning. I am the director of the Office of Workers' Compensation Programs (OWCP), a part of the Employment Standards Administration. OWCP administers the Federal Employees' Compensation Act (FECA), which is the workers' compensation law covering all federal employees. I appreciate this opportunity to discuss with you how the FECA covers claims for injuries arising from work-place exposure to environmental tobacco smoke (ETS).

I understand the Committee is interested in the responsibility of the government for injuries that may arise out of exposure to tobacco smoke in public buildings. I will discuss this issue

from the aspect of the government as an employer, and will explain how injuries or illnesses sustained by employees that arise out of work-place exposure, including to environmental tobacco smoke (ETS), are compensated. I want to emphasize that the FECA already covers ETS-related injuries and illnesses, like any other work-related illness, and will continue to do so as it is not affected by the outcome of the legislation being considered. In addition, since such injuries are covered, the FECA's exclusive remedy provision bars any attempt by employees or their families to recover damages from the government through any other means.

Before going into details on coverage, let me first provide some general background on the FECA. I will then turn to the specific issue of claims arising out of environmental tobacco smoke exposure.

The FECA provides a variety of benefits to those Federal employees who are injured on the job, and to the families of employees who die as a result of work-related factors. In 1991, we marked the seventy-fifth anniversary of the FECA, which covers more than three million civilian employees of the United States in seventy-seven government agencies around the world. Certain other individuals are also covered, including some volunteers. When an employee alleges an injury due to the job, a claim is filed with the employing agency, which processes it and sends it

to one of the twelve OWCP district offices throughout the country for adjudication. An OWCP claims examiner evaluates the claim, may undertake or direct evidentiary development such as medical examinations and air quality studies, and finally makes an eligibility decision on the basis of the evidence. If the claim is accepted, appropriate benefits are paid. If the claim is denied, the claimant has a variety of administrative review and appeal options.

The benefits available under the FECA include payment of all medical expenses resulting from a work-related injury or occupational illness as well as wage-loss benefits for as long as the disability continues. Compensation for the wage loss is paid at two-thirds of the worker's salary, or three-fourths if there is at least one dependent. Death benefits available to the survivors of employees who die of work-related injuries or illnesses, provide 50 percent of the salary to a surviving spouse, and up to 75 percent if there are two or more dependent children. Another benefit is the schedule award, a payment for permanent loss or loss of use of a part of the body, such as a leg, an eye or a lung.

All FECA benefits paid last year totalled about \$1.8 billion. The money is paid from the Employees' Compensation Fund, which is administered by OWCP and is replenished by billing each employing agency through a chargeback system. The appropriated fund

agencies meet their chargeback costs through their annual budget requests to Congress. Costs which are not billable to an agency are paid out of the Department of Labor's appropriation.

There is no limit on the condition which may be covered by the FECA, although those which arise from an employee's willful misconduct, intoxication, or intentional injury are excluded from coverage. Claims fall into two general categories: 1) traumatic injuries, which constitute about 90 percent of all claims, are those caused by a discrete event which occurs during one work shift; and 2) occupational diseases, which develop over time because of repeated exposure, stress or strain, as for example those which arise from repeated exposure to a toxic agent.

In either traumatic injuries or occupational disease claims, the claimant has the initial burden of proving the basic elements of the claim. The elements which are most relevant when we talk about work place exposure to environmental tobacco smoke are:

- o 1) **Fact of injury** - meaning the employee must show that an event or exposure actually occurred which had some impact on the individual requiring medical treatment or resulting in disability;

- o 2) **Performance of duty** - requiring that the exposure occurred in the performance of the job, or otherwise as a result of a factor of employment; and
- o 3) **Causal relationship** - that is, that the medical condition for which compensation is claimed was caused or aggravated by the work injury or event.

The degree of proof needed varies for each case. In some straightforward traumatic injury cases, such as a broken leg resulting from a fall at work, these factors may be relatively easy to show. In more complex occupational disease cases, such as those which generally result from environmental exposures, these elements may be more difficult to establish. This is so in part because the necessary medical evidence may be more difficult to obtain. Particularly when it comes to establishing a causal relationship between the claimed condition and the exposure at work, the evidence must be objective, well-rationalized and based on scientific principles. I will return to this point a little later, in the specific context of environmental tobacco smoke.

Now that I have given some background on the FECA and how the claims process works, let me now turn to FECA coverage of environmental tobacco smoke. First, FECA claims have been filed due to work place injuries from environmental tobacco smoke and

such claims have been accepted and compensation paid. Although OWCP's data base is not indexed in specific enough detail to identify all claims arising from exposure to tobacco smoke, we have identified a number of cases in which claims for ETS-related injuries were accepted. Although we do not know exactly how many ETS-related claims have been filed, we believe the number of cases involved to date has been relatively small.

The claims have been for both traumatic and occupational diseases, and the medical conditions resulting from ETS exposure which have been accepted include aggravation of asthma, rhinitis, non-specific lung disease, allergic reactions (resulting in coughing, hoarseness and swelling of the airways), and hypersensitivity to tobacco smoke. (We can find no record, however, of having received or approved a claim of lung cancer as a result of tobacco smoke.) Injuries have disabled individuals to varying degrees. Many of the approved claims involved only medical costs or very short periods of disability. Others were for temporary aggravation of conditions such as asthma, which the individuals already had but which were exacerbated for short periods. Other cases, however, involve long-term disability; we have identified claims in which the employee has been totally disabled for several years, and compensation and medical benefits paid total thousands of dollars.

It is clear from our review of FECA claims involving ETS-related injuries that the system has shown itself to be able to elicit and interpret the necessary medical evidence in regard to the adjudication of claims, and provide the appropriate medical and other benefits. It is also clear that the ETS-related injuries have resulted in direct costs to the government. While I am not here to speak to the merits of the proposed legislation to ban smoking in all government buildings, the proposed legislation would not change the responsibility of the government, in its role as an employer, for ETS-related injuries. Nor should the growth in scientific evidence concerning environmental tobacco smoke, such as set forth in the recent testimony before this committee by the Surgeon General and by the Director of the Office of Health and Environmental Assessment of the Environmental Protection Agency, have a significant impact on the FECA adjudication process or necessarily result in the acceptance of a large number of additional claims. As illustrated by the cases I mentioned earlier, there has been (for Federal workers' compensation purposes) a sufficient medical basis to causally relate environmental tobacco smoke to individual medical conditions.

I would add that only as far as the proposed legislation and the new scientific findings raise the consciousness of employees regarding the hazards of environmental tobacco smoke, it is possible that we may see an increase in the number of claims

filed. Moreover, in some cases where evidence has not previously been available to establish a causal connection between a particular condition and tobacco smoke, the new scientific studies may make it easier for claimants to support some claims for individual medical conditions. This may be especially common for persons with conditions that have a long latency period. Further, it is possible that, over time, claims would decrease, because of the lack of smoke to which workers would be exposed. I want to emphasize that we have no systematic basis for these conclusions, however, but draw them from anecdotal observations of the process as it now exists.

I appreciate this opportunity to tell you about OWCP and its handling of claims for environmental tobacco smoke related injuries by Federal employees. I will be happy to answer any questions you may have.